

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER MILLER, EMAD AL-KAHLOUT,
HAMADY BOCOUM, CHRISTOPHER CAIN,
GARY GLEESE, JOSE GRINAN, KIMBERLY
HALO, CLARENCE HARDEN, KELLY
KIMMEY, JUMA LAWSON, STEVEN
MORIHARA, SHARON PASCHAL, and
PHILIP SULLIVAN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., and AMAZON
LOGISTICS, INC.,

Defendants.

Case No. 2:21-cv-00204-BJR

**DECLARATION OF ALEXA HAWRYSZ
IN SUPPORT OF DEFENDANTS'
MOTION TO COMPEL ARBITRATION**

DECLARATION OF A. HAWRYSZ
Case No. 2:21-cv-00204-BJR

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2. I am a Director, Amazon Flex, employed by Amazon Corporate LLC and have responsibility for certain functions related to the Amazon Flex Program.

4. Amazon offers various products that customers around the world can purchase, including through Amazon's websites and smartphone applications.

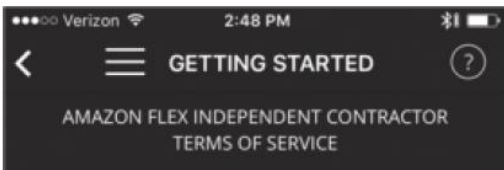
6. The Amazon Flex program allows Amazon to crowdsource independent contractor delivery partners through a smartphone application known as the Amazon Flex app.

8. There have been multiple versions of the Amazon Flex Independent Contractor Terms of Service (the “TOS”). During the time period that is relevant in this case, the first version of the TOS was in effect between September 21, 2016 and October 3, 2019 (attached as **Exhibit A** and referred to as the “2016 TOS”). The second relevant version of the TOS took effect beginning October 3, 2019 (attached as **Exhibit B** and referred to as the “2019 TOS”). And the third relevant version of the TOS took effect for non-California delivery partners, like the relevant Plaintiffs here, beginning in mid-May 2021 (attached as **Exhibit C** and referred to as the “2021 TOS”).

9. Prospective Amazon Flex delivery partners have always been free to spend as much time as they wish reviewing the Terms of Service before accepting them. The 2016 TOS, 2019 TOS, and 2021 TOS have also been accessible in the Account/View Legal Information section of the Amazon Flex app.

10. Individuals signing up through the Amazon Flex app had to click twice on buttons stating "I AGREE AND ACCEPT." The first time was to accept the TOS, and the second was to specifically accept the arbitration provision of the TOS, which is on the first page of the TOS and in Section 11.

11. While the 2016 TOS was in use, the first page that delivery partners had to accept presented the full 2016 TOS (available by scrolling through the app) and looked as follows:



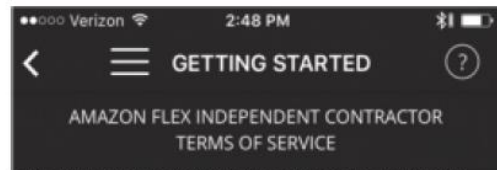
AMAZON FLEX

INDEPENDENT CONTRACTOR TERMS OF SERVICE

Welcome to the Amazon Flex program (the "Program"). These Terms of Service (this "Agreement"), including the Program Policies, attached as an Exhibit A, will govern the transportation and delivery services contemplated by this Agreement (the "Services") and constitute a legally binding agreement between Amazon Logistics, Inc. ("Amazon") and you. Any reference to this Agreement includes the Program Policies. This Agreement takes effect on the date on which you click through this Agreement when creating your account for the Program (your "Program Account") or, if earlier, when you begin to perform the Services (the "Effective Date"). If there is a conflict between the Program Policies and any other section of this Agreement, the Program Policies will prevail.

YOU AND AMAZON AGREE TO RESOLVE DISPUTES BETWEEN YOU AND AMAZON ON

I AGREE AND ACCEPT



you will provide Amazon with any forms, documents, or certifications as may be required for Amazon to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement.

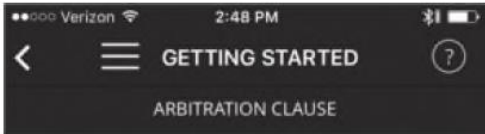
X. Additional Terms.

A. A party does not waive any right under any provision of this Agreement, including Program Policies, by failing to insist on compliance with, or by failing to exercise any right under, the applicable provision. Any waivers granted under this Agreement are effective only if recorded in a writing signed by the party granting such waiver. The section headings of this Agreement, including Program Policies, are for convenience only and have no interpretive value.

B. You will not assign, subcontract, or delegate any of your rights or obligations under this Agreement, or your Program Account, without Amazon's prior written consent. Any attempt by you to assign, subcontract, or delegate in violation of this Agreement will be null and void.

I AGREE AND ACCEPT

The second page that delivery partners had to accept, which showed the arbitration provision a second time, looked as follows:

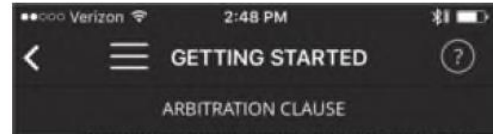


Dispute Resolution, Submission to Arbitration

a. SUBJECT TO YOUR RIGHT TO OPT OUT OF ARBITRATION, THE PARTIES WILL RESOLVE BY FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT, ANY DISPUTE OR CLAIM, WHETHER BASED ON CONTRACT, COMMON LAW, OR STATUTE, ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING TERMINATION OF THIS AGREEMENT, TO YOUR PARTICIPATION IN THE PROGRAM OR TO YOUR PERFORMANCE OF SERVICES. TO THE EXTENT PERMITTED BY LAW, THE PRECEDING SENTENCE APPLIES TO ANY DISPUTE OR CLAIM THAT COULD OTHERWISE BE ASSERTED BEFORE A GOVERNMENT ADMINISTRATIVE AGENCY.

b. TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY DISPUTE

I AGREE AND ACCEPT



amazonflex-support@amazon.com before the end of the Opt-Out Period (defined below). The e-mail must include your name and a statement indicating that you are intentionally and knowingly opting out of the arbitration provisions of the Amazon Flex Independent Contractor Terms of Service. You will not be subject to retaliation for asserting claims or opting out of this agreement to arbitrate.

- If Amazon e-mailed you this Agreement as an update to the Amazon Flex Independent Contractor Terms of Service to which you previously agreed, the Opt-Out Period ends 14 calendar days from the date of Amazon's e-mail to you.
- If you have not agreed to any previous version of the Amazon Flex Independent Contractor Terms of Service, the Opt-Out Period ends 14 calendar days from the date on which you click "I AGREE AND ACCEPT" to accept this Agreement in the Amazon Flex App.

I AGREE AND ACCEPT

12. The 2016 TOS gave new Amazon Flex delivery partners the option to "opt out" of the arbitration agreement. To opt out, the delivery partner needed to send an email to the identified Amazon email address within 14 days after accepting the 2016 TOS.

13. Plaintiff Jennifer Miller accepted the 2016 TOS and her Amazon Flex account was activated on or about November 14, 2018. She did not opt-out of the arbitration provision of the 2016 TOS.

14. Plaintiff Emad Al-Kahlout accepted the 2016 TOS and his Amazon Flex account was activated on or about November 18, 2017. He did not opt-out of the arbitration provision of the 2016 TOS.

1 15. Plaintiff Hamady Bocoum accepted the 2016 TOS and his Amazon Flex account
2 was activated on or about August 1, 2018. He did not opt-out of the arbitration provision of the
3 2016 TOS.

4 16. Plaintiff Christopher Cain accepted the 2016 TOS and his Amazon Flex account
5 was activated on or about June 29, 2018. He did not opt-out of the arbitration provision of the
6 2016 TOS.

7 17. Plaintiff Gary Gleese accepted the 2016 TOS and his Amazon Flex account was
8 activated on or about November 17, 2017. He did not opt-out of the arbitration provision of the
9 2016 TOS.

10 18. Plaintiff Jose Grinan accepted the 2016 TOS and his Amazon Flex account was
11 activated on or about October 28, 2017. He did not opt-out of the arbitration provision of the
12 2016 TOS.

13 19. Plaintiff Kimberly Halo accepted the 2016 TOS and her Amazon Flex account
14 was activated on or about October 5, 2018. She did not opt-out of the arbitration provision of the
15 2016 TOS.

16 20. Plaintiff Clarence Harden accepted the 2016 TOS and his Amazon Flex account
17 was activated on or about September 1, 2019. He did not opt-out of the arbitration provision of
18 the 2016 TOS.

19 21. Plaintiff Kelly Kimmey accepted the 2016 TOS and her Amazon Flex account
20 was activated on or about July 11, 2017. She did not opt-out of the arbitration provision of the
21 2016 TOS.

22 22. Plaintiff Juma Lawson accepted the 2016 TOS and his Amazon Flex account was
23 activated on or about April 26, 2019. He did not opt-out of the arbitration provision of the 2016
24 TOS.

1 23. Plaintiff Steven Morihara accepted the 2016 TOS and his Amazon Flex account
2 was activated on or about November 10, 2017. He did not opt-out of the arbitration provision of
3 the 2016 TOS.

4 24. Plaintiff Sharon Paschal accepted the 2016 TOS and her Amazon Flex account
5 was activated on or about November 13, 2017. She did not opt-out of the arbitration provision of
6 the 2016 TOS.

7 25. Plaintiff Philip Sullivan accepted the 2016 TOS and his Amazon Flex account
8 was activated on or about May 28, 2017. He did not opt-out of the arbitration provision of the
9 2016 TOS.

10 26. Under the 2016 TOS, Amazon Flex delivery partners agreed that Amazon had the
11 ability to modify the agreement “at any time by providing notice to [the driver] through the
12 Amazon Flex app or otherwise providing notice.” Ex. A (2016 TOS), § 13. The 2016 TOS
13 further stated, “If you continue to perform the Services or access Licensed Materials (including
14 accessing the Amazon Flex app) after the effective date of any modification to this Agreement,
15 you agree to be bound by such modifications.” *Id.*

16 27. On or about October 4, 2019, once the 2019 TOS took effect, Amazon distributed
17 notice of the updated terms to existing Amazon Flex delivery partners (*i.e.*, those who had joined
18 the Amazon Flex program and agreed to the TOS before the 2019 TOS’s effective date) via
19 email sent to the email address each such driver agreed to keep current (attached as **Exhibit D**).

20 28. Those existing Amazon Flex delivery partners included Plaintiffs Miller, Cain,
21 Gleese, Grinan, Halo, Harden, Kimmey, Lawson, Morihara, Pascal, and Sullivan, and Amazon’s
22 records show that all eleven of these Plaintiffs continued to access the Amazon Flex app after
23 October 4, 2019.

24 29. Miller, for example, scheduled and completed four delivery blocks between
25 October 9, 2019 and March 15, 2020.

1 30. Cain scheduled and completed over forty-five delivery blocks between October 5,
2 2019 and March 8, 2020.

3 31. Gleese logged into the Flex app on October 5, 2019.

4 32. Grinan scheduled and completed five delivery blocks between February 5, 2020
5 and February 28, 2020.

6 33. Halo scheduled and completed over 290 delivery blocks between October 4, 2019
7 and January 29, 2021.

8 34. Harden scheduled and completed over twenty delivery blocks between October
9 10, 2019 and December 13, 2019.

10 35. Kimmey scheduled but did not attend over 20 delivery blocks between April 2,
11 2020 and May 4, 2021.

12 36. Lawson scheduled and completed over 50 delivery blocks between October 4,
13 2019 and December 2, 2019.

14 37. Moriwara scheduled and completed over thirty-five delivery blocks between
15 October 4, 2019 and December 22, 2020.

16 38. Paschal logged into the Flex app on September 9, 2020.

17 39. Sullivan scheduled and completed over 300 delivery blocks between October 4,
18 2019 and January 20, 2021.

19 40. Under the 2019 TOS, Amazon Flex delivery partners agreed that Amazon had the
20 ability to modify the agreement “at any time by providing notice to [the driver] through the
21 Amazon Flex app or otherwise providing notice.” Ex. B (2019 TOS), § 13. The 2019 TOS
22 further stated, “If you continue to perform the Services or access Licensed Materials (except for
23 accessing the Amazon Flex app for the purpose of considering whether to agree to modifications
24 of the Terms of Service) after the effective date of any modification to this Agreement, you agree
25 to be bound by such modifications.” *Id.*

1 41. On or about May 1, 2021, Amazon distributed notice of updated terms to existing
2 Amazon Flex delivery partners outside the state of California via email sent to the email address
3 each such driver agreed to keep current (attached as **Exhibit E**). This email stated that continued
4 use of the Amazon Flex app after 14 calendar days from the date of the email would constitute
5 acceptance of the updated terms. *See* Ex. E.

6 42. The existing Amazon Flex delivery partners who received this email included
7 Plaintiffs Cain and Halo, and Amazon's records show that these two Plaintiffs continued to
8 access the Amazon Flex app after May 15, 2021 to schedule delivery blocks.

9 43. Cain scheduled a delivery block for June 2, 2021.

10 44. Halo scheduled over fifteen delivery blocks between May 16, 2021 and June 16,
11 2021.

12 45. Amazon Flex delivery partners can make deliveries through various programs,
13 including the "GSF" or "Global Specialty Fulfillment" umbrella of programs, which involve
14 delivering items that are stocked and/or prepared locally.

15 46. During the time relevant to Plaintiffs' claims in this litigation (2016 to
16 approximately August 2019, *see* FAC ¶¶ 34, 45-51), the GSF umbrella of programs included:

- 17 • Amazon Fresh (groceries sold by Amazon).
- 18 • Store orders (e.g., groceries picked up at Whole Foods Markets).
- 19 • Prime Now (locally stocked items with a 1 or 2-hour turnaround).
- 20 • Amazon Restaurants (items from restaurants, now discontinued).

21 47. During the same period, only deliveries under the GSF umbrella were eligible for
22 tips from the customer who placed the order.

23 48. Separate from GSF delivery blocks, a delivery partner can schedule delivery blocks
24 to make "AMZL" deliveries of items warehoused in our fulfillment centers.

25 49. During the time relevant to Plaintiffs' claims, AMZL delivery blocks were not
26 eligible for tips from the customer who placed the order.

51. Delivery partners are under no obligation to make deliveries for both AMZL and GSF, and some delivery partners have scheduled GSF delivery blocks exclusively.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

DocuSigned by:
Alexa Hawrysz
D202726097B54A1...

ALEXA HAWRYSZ